

REQUEST FOR PROPOSALS

COUNTY OF FRESNO

**Preparation of Solid Waste Facilities Permit Application,
Compliance with Waste Discharge Requirements,
Preparation of Plans, Specifications and Cost Estimate for
Construction of a Storm Water Collection Basin**

At The

Coalinga Landfill

Coalinga, CA

SUBMITTAL: Six (6) copies must be received on or before:
5:00 p.m. August 27, 2001

Addressed to: Stuart G. Seiden, Capital Projects Division Mgr.

Mailing Address: Department of Public Works, Capital Projects Division
2220 Tulare Street, Suite 600
Fresno, CA 93721

Mark Envelope: **"PROPOSAL – Regulatory Compliance"**

PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE SHALL BE
RETURNED UNOPENED TO THE PROPOSER.

INQUIRIES:

Direct questions or clarifications of this Request For Proposals document to Baron Zerahian, Staff Analyst, (phone: 559-262-4866, fax: 559 488-1945, e-mail: bzerahian@fresno.ca.gov), Capital Projects Division, Department of Public Works.

Project related technical questions should be directed to Tim Cockrum, Senior Engineer, (559-262-4259, fax: 559-262-4466, e-mail: tcockrum@fresno.ca.gov) Resources Division, Planning & Resource Management Department.

CONSULTANT SELECTION POLICY:

Copies of the Fresno County Board of Supervisors Resolution 90-028 (Ordinance Code Chapter 4.10) which establishes procedures that implement the selection of Architects, Engineers, and other Professionals, may be obtained from Baron Zerahian, Staff Analyst.

It is the intent of the County to engage a consultant who will provide professional services as described herein; however the County reserves the right, at its sole discretion, to terminate this RFP process or negotiations with a selected consultant and either perform the work with their staff or begin a new RFP process. Nothing herein, or in the process, shall be construed as having obligated the County to pay for any expenses incurred by respondents to this RFP, or to the selected consultant prior to Board of Supervisors' approval of a consultant services agreement.

FRESNO COUNTY'S WEBSITE:

An electronic copy of this Request For Proposals and Fresno County's Consultant Selection Policy is available on Fresno County's website at the URL: www.fresno.ca.gov/4510/index.htm.

MODIFICATIONS:

Any modifications to this RFP will be provided to RFP holders of record. In order to become an RFP holder of record, one must submit to the County the information on the "Notice of Issuance" or provide similar written notification if the RFP is downloaded from the website or obtained from other sources.

Issuance Date: August 2, 2001

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ATTACHMENTS

Attachment I	Vicinity Map
Attachment II	Coalinga Landfill Contour Map
Attachment III	Sample Consultant Agreement

I. SUMMARY**A. INTRODUCTION AND PROJECT OVERVIEW:**

Fresno County seeks to retain the services of a qualified consultant civil engineer to perform geologic and hydrogeologic services necessary to bring the Coalinga Landfill into compliance with waste discharge requirements. This will include gathering all information for a Solid Waste Facilities Permit Application, designing, preparing plans, specifications, cost estimates and construction schedules for construction of a storm water collection basin at the site.

B. REQUIRED CONSULTANT SERVICES:

The consultant shall provide qualified staff or retain subconsultants for the following specialties at his/her own expense to provide technical assistance to meet the program requirements.

1. Registered Hydrogeologist
2. Geotechnical Services
3. Surveying

All geotechnical and surveying labor provided by the consultant or its subconsultants must be compensated at prevailing wage rates. The consultant shall also be required to comply with the Fair Political Practices Act reporting requirements.

If this project requires services that are not part of the Basic Services, the consultant may be requested by the County to provide extra services. These extra services must be pre-approved and authorized in writing by the County before work can commence.

C. EXISTING CONDITIONS:

The Coalinga Landfill site is located in southwestern Fresno County, approximately one mile south of the City of Coalinga (refer to Attachment I for vicinity map). The landfill is accessed from State Highway 198 to Alcalde Road. The site is located in the northwest ¼ of Section 9 of Township 21 south, Range 15 east, Mount Diablo Canyon Baseline.

The Landfill is located on property owned by Chevron USA, Inc. and leased to Fresno County. Fresno County assumed operation of the site from the City of Coalinga in 1969.

This Class III Landfill operates under a Solid Waste Facilities Permit issued by

the County Community Health Department with the concurrence of the California Integrated Waste Management Board. The Landfill also operates according to the California Regional Water Quality Board Waste Discharge Requirements (WDRs).

The entire landfill site consists of approximately 121 acres. Waste disposal is permitted on approximately 52 acres, and the landfill receives approximately 18,000 to 19,000 tons of solid waste per year.

II. PROJECT INFORMATION AND REQUIREMENTS

A. PROJECT BACKGROUND:

State and Federal regulations require that landfills contain all rainfall runoff onsite. An onsite storm water collection basin is required at the Coalinga Landfill to replace a series of ditches and berms presently used to control rainfall runoff. A new Solid Waste Facilities Permit is required because of changed conditions (increased tonnage, change of ownership). Additional hydrogeologic work is necessary as a result of Waste Discharge Requirements.

B. EXISTING CONDITIONS:

The landfill has two waste disposal area footprints. The main one is approximately 38.2 acres in area and located at the southern end of the property. A smaller one, which is approximately 13.6 acres, is located along the eastern property line. A current contour map of the Landfill is provided in Attachment II.

C. PROJECT MILESTONES:

<u>Activity Description:</u>	<u>Estimated Duration</u>
Issuance of RFP and consultant responses	4 wks
Consultant Selection	5 wks
Agreement Negotiations and Execution	6 wks
Phase 1, Geologic and Hydrogeologic Investigation (overlap with Ph. 2)	8 wks
Phase 2, Preliminary Design (including review time)	8 wks
Phase 3, Preparation of Regulatory Documentation (overlap)	5 wks
Phase 4, Final Design (including review time)	8 wks
Phase 5, Bidding and Award	10 wks
Phase 6, Construction Observation	8 wks
Phase 7, Post Construction	2 wks

Note: Finalists interviews have been tentatively scheduled for the week

beginning September 17, 2001. Proposers will be notified of those advanced to finalist status by fax and mail.

D. SAMPLE CONSULTANT AGREEMENT:

Sample Consultant Agreement (Attachment III) is provided as an example of the typical language in a consultant service agreement with the County. It is recommended that the Consultant review the sample agreement with legal counsel and insurance providers. The Agreement requires the consultant carry a **Professional Practice Insurance Policy** in the amount of \$1,000,000.

Finalists shall be prepared to raise any concerns about the sample agreement at the interview.

III. SERVICES OF THE CONSULTANT

The consultant services shall include, but not be limited to the following:

Throughout the length of the project, the Consultant shall consult, communicate and meet with County's project committee and staff as often as necessary (a minimum of one meeting per month) in order to verify, refine, and complete the project requirements and review the progress of the project. Consultant shall prepare brief minutes of the meetings attended and shall provide a copy of all such minutes to the County. Consultant shall develop and maintain a project schedule and status report that will be updated and submitted to the County on a monthly basis.

A. Phase 1, Geologic and Hydrogeologic Investigation

The Consultant shall:

1. Develop project parameters in concert with the County's recommendations and concerns.
2. Review and evaluate County provided reports and plans including, but not limited to, the Coalinga Preliminary Closure and Post Closure Plan, surveying data, and existing data gathered from groundwater monitoring and control systems.
3. Make contact with regulatory agencies that have permit authority regarding landfill issues. Identify and document all regulatory compliance measures and approval processes required to complete this project.
4. Conduct a site investigation to determine existing field conditions. Identify and verify existing improvements such as utility poles, underground telephone lines, structures, roads, fences, trees, etc.
5. Conduct hydrogeologic investigation and prepare associated documents. Review existing data and conduct field investigation including any exploration activities necessary to develop hydrogeologic definition of site. Prepare documents for proposed groundwater and vadose zone detection monitoring systems in accordance with California Code of Regulations (CCR), Title 27, Sections 20380-20430, and submit them to the Regional Water Quality Control Board (RWQCB) for approval. Install all facilities necessary for groundwater and vadose zone detection monitoring systems including completion of monitoring wells in selected test holes, implementation of vadose zone monitoring and preparation of completion report that will be forwarded to the RWQCB (due by 12-31-01). Develop Water Quality Protection Standard from the sampling events of at least four (4) new monitoring wells (due by 3-31-02). Prepare

and submit a Groundwater Degradation Determination Report to the RWQCB (due by 9-30-02).

B. Phase 2, Preliminary Design of Storm Water Drainage and Basin System

The Consultant shall:

1. Meet with the County to discuss the design perimeters, etc.
2. Prepare preliminary engineering report that will include a schematic basin design and the hydrology and hydraulics calculations and address design issues.
3. Monitor and keep County informed regarding the impact of design issues on the project budget. Upon the request of the County, Consultant shall incorporate into the design such reasonable changes as the County deems appropriate as a result of the County's review processes and impact of the budget or engineer's estimate.
4. Upon approval of the preliminary engineering report, prepare the preliminary plans, engineer's estimate and preliminary specifications incorporating the County's comments. The preliminary plans shall be prepared on 24" by 36" sheets, or other size approved by County, and engineer's estimate and preliminary specifications on 8-½ " by 11" pages.
5. Submit four (4) copies of preliminary plans, specifications, engineer's estimate and construction schedule to the County for review.
6. Revise preliminary plans, and other documents as necessary after County's review.

C. Phase 3, Preparation of Regulatory Documentation

The Consultant shall:

1. Prepare a Joint Technical Document (JTD) for Disposal Facilities in accordance with CCR, Title 27, Sections 21585, 21710, 21750 and 21760 for the State Water Resources Control Board (SWRCB), and Sections 21590 and 21600 for the California Integrated Waste Management Board (CIWMB). The JTD shall include components of the Report of Waste Discharge (ROWD) and Report of Disposal Site Information (RDSI). Also include any information required by San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).
2. Prepare a complete Solid Waste Facilities Permit (SWFP) application with

information compiled from the geologic and hydrogeologic investigation, Joint Technical Document and other such information as required. Submit a complete application package to the CIWMB and the RWQCB as specified in CCR Title 27, Section 21570.

3. As part of the grading plan required in the JTD, prepare a Storm Water Management Plan, Groundwater Sample Collection and Analysis Plan and Excavation and Fill Sequence Plan. All plans and documents must be consistent with and conform to the Coalinga Landfill Preliminary Closure and Postclosure Plan.
4. Prepare any other applications and expedite agency review processing as may be required for this project. The Consultant shall be responsible for facilitating all agency review and approval processes so permits can be obtained in an expeditious manner.
5. Attend meetings scheduled by County or other agencies. If necessary, prepare presentation material acceptable to County and perform presentations.

D. Phase 4, Final Design of Storm Water Drainage and Basin System

The Consultant shall:

1. Prepare final plans from preliminary design, as modified by the County, on a CAD system acceptable to the County (such as DataCAD or AutoCAD) and on 24" by 36" sheets, or other size approved by County, drawing size sheets and technical specifications on 8-1/2" by 11" pages setting forth in detail the work to be done, and other components of construction necessary to provide the County a complete and functional project for its intended purpose.
2. Drawing elements on the CAD system shall be true scale. Coordinate systems of all digital data for consultant-prepared plans and drawings shall be based on the original coordinates/bearings used in the survey data provided by the County. Any text documents submitted electronically for inclusion into the project shall be capable of being opened by Word Perfect or Microsoft Word 97 word-processing software. These requirements apply to both final electronic and hard copies of plans and other design information.
3. Prepare construction specifications in UCI/CSI 16 division format with an IBM PC-compatible word processing program such as WordPerfect or Microsoft Word. The County will prepare bidder's instructions, general conditions, and supplemental general conditions.

4. Review, comment, and/or make recommendations on the form and content of the County's General Conditions, Special Conditions, and Bid Form as they apply towards the project.
5. In addition to the technical specifications, prepare any special or supplemental conditions for the construction contract. The County will package the Consultant's documents with the County's approved General Conditions, Notice to Contractors calling for bids, the Bid Form, and related documents to complete the construction contract and bid specifications.
6. Submit the construction period for bidding purposes to the County for approval and identify long delivery times of materials and equipment that will affect length of construction contract.
7. Include alternate bid items (preferably additive), not as separate design drawings but incorporated into the original construction drawings, to allow construction element choices or cost options by the County. The basis of award may be on the base bid only, or base bid plus additive alternates. Additive bid items may be necessary so that the County will be able to award a construction contract not exceeding available construction funds.
8. If required for the construction of this project, propose and submit a recommended testing and inspection list for materials identifying type, quantity, frequency, schedule, and cost estimate of tests to be performed by an independent testing firm during construction.
9. After final plans are completed the Consultant shall also prepare quantity calculations for each item of work. These calculations will be checked by an individual other than the person making the original calculations.
10. Submit to the County ten (10) sets of the completed final plans, specifications, and engineer's estimate. Consultant shall meet as necessary with the County to ensure that the plans, specifications, and estimates meet all requirements to obtain approval from the County for the project to be advertised for construction bids.
11. Sign all final plans, specifications, and estimates and engineering data furnished to the County and where appropriate indicate his/her professional engineer's registration number.
12. Submit grading and drainage plan to County's grading engineer for review and approval.

13. Submit final plans and construction documents to CIWMB and the SJVAPCB for approval and permits.
14. Submit progress originals and final originals of the plans, specifications, and engineer's estimate of construction cost for reproduction by the County. Submit four copies of structural calculations.
15. Not proceed with the next Phase unless expressly authorized in writing by County.

E. Phase 5, Bidding and Award

The Consultant shall:

1. Deliver to the County two (2) weeks prior to the advertising date (date will be determined by County), the final completed original drawings and specifications for County printing and distribution of bid sets to interested contractors. The original drawings and specifications index sheet shall be stamped by a seal with Consultant and subconsultants' license numbers and/or signed in accordance with the California Business and Professions Code. Final plans, specifications, and engineer's estimate shall be submitted electronically along with the hard copies.
2. Submit to the County for review and approval any addenda deemed necessary. Addenda, if any, shall be submitted no later than ten (10) working days prior to the scheduled bid opening. The addendum shall be distributed by the County. An electronic copy of addenda items shall be furnished to the County. No addendum will be issued in the 72 hour period prior to bid opening.
3. Prepare addendum drawings and other documents as required to clarify scope of work to be bid upon, at no additional cost to the County. Addenda shall be prepared in a format that will only require addition of a cover letter. Addenda shall be stamped by a seal with Consultant and/or subconsultant's license numbers and/or signed in accordance with the California Business and Professions Code.
4. Submit a list of general and specialty contractors who may be interested in bidding on this project.
5. Provide assistance with responding to inquiries from potential bidders or their subconsultants.
6. Attend the pre-bid conference scheduled by the County.

7. Assist the County in evaluating the base bids and alternate bid items received to identify and explain significant differences, if any, between the consultant's engineer's estimate and the low bid.
8. Delete or otherwise change portions of the construction work at the request of the County if the lowest bid proposal for the proposed construction contract exceeds the County approved estimate (which will include the Consultant's design contingency amount approved by the County) by 10% or more, and if the County rejects all bids. In such event, the Consultant shall revise the plans and specifications to comply with such modifications and also shall assist the County in obtaining new proposals from contractors, all at no additional cost to the County. Such modifications shall be completed on a time schedule commensurate with the scope of the change and as set forth by the County.

F. Phase 6, Construction Observation

The Consultant shall:

1. Attend the preconstruction meeting scheduled by the County.
2. At intervals appropriate to the stage of construction, or as otherwise deemed necessary by Consultant or County, visit the site of the project as necessary to become familiar generally with the progress and quality of the work and to determine that the work is proceeding in general accordance with the contract documents.
3. Assist the County's Construction Inspector by providing construction observation including making recommendations to the County on all claims of the County or construction contractor, interpretation of the Consultant's contract documents, and recommending and assisting in the preparation of such change orders as are deemed necessary.
4. Recommend and prepare such change orders as are deemed necessary, and engineer's estimate. Where the change order arises as a result of a negligent error or omission of the Consultant, the Consultant shall not be compensated as an Extra Service for time spent or cost incurred in efforts connected with the correction thereof. Any changes to the construction contract shall be made only with written County approval.
5. Assist County, at County's express, written authorization, with any claim resolution process involving Contractor and County as specified hereunder, including serving as a witness in connection with any public hearings or legal proceeding, including dispute resolutions required by law or hereunder. Compensation for these services under this Paragraph

III.E.5, shall be provided under the Extra Services provisions under Article V., Section C. of this Agreement.

G. Phase 7, Post Construction

The Consultant shall:

1. Inform the County of all written guarantees required of the Contractor by the Consultant's technical specifications or special conditions.
2. Return to County all plans borrowed from County by Consultant.
3. Require through the construction contract specifications that record drawings be prepared by the Contractor and submitted to the County for acceptance by the construction inspector and Consultant. Upon completion of the project, obtain from the Contractor all information necessary to document all changes made to the project, proceed to transfer the Contractor's record drawing changes onto the Consultant's original drawings or .003" mylar (matte one or both sides) reproducibles of the original drawings. The complete record drawing set shall remain at all times the property of the County. Changes shall be identified by cloud markings and shall identify date of change and its source, such as from addenda, change order, or clarification. Consultant shall have no responsibility for the accuracy of information provided, either by the Contractor or by the construction inspector, for transfer to record drawings.
4. If construction plans have been prepared with a CAD system, record drawings in the form of .dxf or .dwg files shall be furnished and delivered to Department of Public Works in addition to mylar reproducibles. Such .dxf or .dwg files shall be furnished on either 100MB 'Zip' disks, 3.5" DS/HD disks, or compact disk (CD-ROM). Final plans and specifications become the property of the County and can be used by the County at its own discretion.
5. Participate fully, aligned with and not adverse to the County, upon request, in the early settlement discussions of construction claims resolution issues.
6. No final payment to the Consultant will be issued until the services of this Phase have been performed and negligent errors, acts and omissions attributed to the Consultant have been resolved.

IV. **SERVICES PROVIDED BY THE COUNTY**

A project committee consisting of members from the Administrative Office, Planning & Resource Management Department and Department of Public Works will guide the Owner's interest and carry forward recommended project scoping and details to the Board of Supervisors.

Fresno County will provide the services listed below in support of the Consultant's professional services. The Consultant shall be responsible for the evaluation of all information supplied by the County and verifying its accuracy.

The County will:

- A. Allow access to all landfill records and documents.
- B. Provide a County representative who shall represent the County and shall work with the Consultant in carrying out the provisions of the Agreement.
- C. Transmit documents for other agency reviews, and pay application and review processing costs.
- D. Assume all costs associated with reproducing the final bid documents and addenda and their distributions. Assume all project advertising costs.

V. **BACKGROUND CHECK**

The County reserves the right to conduct a background inquiry of each proposer which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal to the County, the proposer consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the inquiry.

VI. **PROPOSAL SUBMITTAL REQUIREMENTS**

Please do not provide more information than requested by Article VI of this Request For Proposals. The completeness of the proposal will be evaluated by a Selection Committee.

Submittal will be in two parts.

PART A.

The first part will enable the County to appraise the general qualifications of the consultant. You must answer the following questions in the same

sequence as below.

1. Firm name, address, phone number, fax number and E-mail address and/or Web page address (if available). Also, provide this information on all associated firms and partners.
2. Specify type of organization (individual, partnership or corporation including the state of incorporation) and if applicable indicate whether you are:
 - a Small Business.
 - b Disadvantaged Business.
 - c Minority and/or Women Owned Business.
3. Firm principals who will be responsible for the project, their education, credentials, and experience in similar work.
4. Key personnel who will be assigned to work on the project, their education, credentials, and experience on comparable projects. Indicate the tasks to be performed by these key individuals and expected time or effort they will commit to the project.
5. Subconsultants (as the project may require) to be used. Indicate the tasks to be performed by these consultants.
6. Present staff - number and classification. Will you have to secure more staff to complete the commission?
7. List current projects or commitments for services in your office.
8. List in reverse chronological order for the last five years projects involving geologic and hydrogeologic services, preparation of Solid Waste Facilities Permit Applications, compliance with waste discharge requirements and the preparation of plans for storm water collections basins, or other work closely related to this project.

Indicate for each of these projects:

- (a) Name of project
- (b) Project location
- (c) Brief description of the project
- (d) Name of owner
- (e) Name of owner's contact person and telephone number (Contact person, who, at the time of RFP submittal, was, will be or is employed by the owner and who would have personal knowledge of the completed work)
- (f) Your firm's specific involvement (Engineer of Record (EOR), sub-

consultants or other capacity)

9. List at least four additional references of present or past clients with their telephone numbers and fax number.
10. Include a current copy of Standard Form 254 (showing relevant facility experience) for your firm. You may also provide a SF 254 for sub-consultants.
11. The Consultant shall submit as a part of his or her initial submittal the firm's current basic hourly rate schedule for all current employee classifications. Also provide hourly rates for Court appearances and testimony. Such hourly labor rates shall include costs for items such as office supplies, computer and plotting supplies, printing, postage, vehicle costs, and other incidentals.

(Printing includes normal office copying and printing, check plots and check prints, and other incidental printing. Printing includes other agency review / approval plans if specifically required as a basic service in accordance with Section III. Other printing is usually either authorized as an Extra Service or arranged through the County's contracted printing companies at the County's expense.)

Include the same information for all proposed sub-consultants. Hourly rates shall be used as the basis of assessing changes in the scope of work.

The Consultant will be required to submit a sealed estimated fee based on the scope of work defined in this RFP and subsequent addenda, only if selected as a finalist.

PART B.

The second part covers the tasks required of the consultant.

1. Explain in detail how the project will be approached and accomplished. This should include a description of the work to be performed in each phase of the project.
2. Provide recommendations on ways the project may be improved.
3. Provide a project schedule and time line for completing each phase described in Article III of this RFP.

VII. CONSULTANT SELECTION PROCEDURE

The selection procedure shall be in accordance with Fresno County Ordinance

Code Chapter 4.10 and applicable provisions of the "Policy for Selection and Compensation of Architectural / Engineering Consultants" as last revised by the Board of Supervisors on November 29, 1994. The process includes the following provisions:

A Selection Committee will be formed to evaluate the proposals and to make recommendations to the Fresno County Board of Supervisors. The Selection Committee will consist of members from the County Administrative Office, Department of Public Works, and Planning & Resource Management Department, and may include a representative knowledgeable in engineering services from outside the community or from one of the universities. The Selection Committee will screen the received responses to the Request For Proposals and may select three or more firms as finalists. More firms will be considered as finalists when, in the judgment of the Selection Committee, other firms are equally qualified to provide the requested professional services. Finalists may be requested to interview with the Selection Committee as a part of the evaluation process.

After the finalist firms have been identified, and as a part of the Selection Committee's evaluation at interview time, the finalist firms will be required to submit estimated fees to provide professional services for the project. The estimated fees will be opened only after the Selection Committee has completed all of the interviews and considered each of the finalist's qualifications. The Selection Committee will consider the estimated fees of the finalists in its final deliberations.

The Selection Committee will address the following criteria in its evaluation of proposals (not necessarily in order of importance).

- A. Experience with emphasis on projects involving bringing landfills in compliance with waste discharge requirements and designing storm water collection basins. Preference will be given to applicants with prior experience of this type of project.
- B. Educational background of the consultant's key individuals who will be assigned to the project on a full-time basis.
- C. Quality of past performance for the County or similar agencies.
- D. Qualifications of individual within the Consultant's organization directly responsible for the work. The County reserves the right of approval of the Consultant's project manager.
- E. Adequacy of staff to perform the work within the time allowed.
- F. Approach proposed to address the project requirements.

- G. Demonstrated ability to make effective public presentations on the requested reports and proposed designs.
- H. Demonstrated ability to work effectively with County staff, other public agencies and related parties.
- I. New or innovative ideas presented by the consultant in the proposal or presentations.
- J. Demonstrated ability to keep costs within project budgets and design estimates.
- K. Knowledge of local conditions.
- L. Demonstrated interest of the consultant in the success, efficiency, and workability of the facility during construction and post construction operation.
- M. Whether the consultant is currently engaged in another project which has direct and substantial physical relationship to the proposed project.
- N. Whether the consultant who designed the original facility should be retained for the new work on the basis of cost, detailed knowledge of the existing facility, or necessity of use of the same design concept in the work.
- O. Demonstrated record of abiding by terms of subcontract agreements regarding timely payment for services rendered on County projects.
- P. Ability of the Consultant to furnish effective and timely construction observation services.
- Q. Completeness of proposal.
- R. The estimated fee will be a factor in the final selection only after the most qualified firms have been identified.
- S. All other things being equal, local (within Fresno County) consultants are preferred over non-local consultants.
- T. All other things being equal, non-local consultants who associate with a local consultant for the purpose of the particular services required shall be preferred to non-local consultants who do not so associate.

VIII. FEE DETERMINATION

The Consultant compensation amount for the project will be negotiated with the Board of Supervisors' selected firm. In the event negotiations fail with this firm, the

County will terminate negotiations and commence new negotiations with the next most qualified firm.

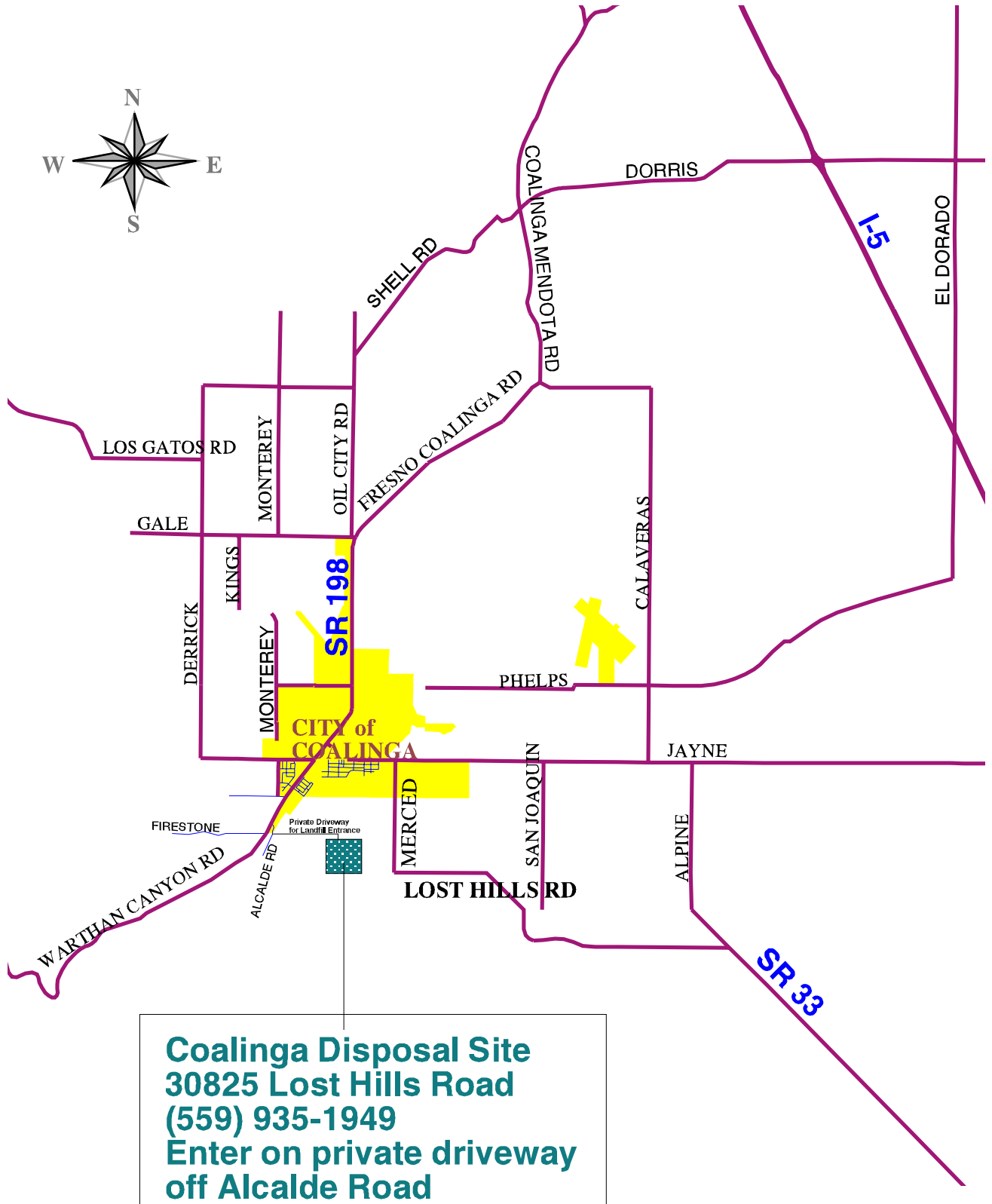
IX. SITE VISIT

A site visit is scheduled for 10:00 AM on Wednesday, August 15, 2001 to review existing conditions. The site visit will begin at the front gate of the Coalinga Landfill.

This site visit is highly recommended to gain an understanding of the project scope, however, attendance is not mandatory. If you plan to attend, please contact Baron Zerahian at (559) 262-4866 or e-mail him at bzerahian@fresno.ca.gov at least three working days in advance of the scheduled site visit.

BZ:bz
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Coalinga Disposal Site



0 0.5 1 1.5 2 2.5 3 Miles

07/08/98

1 ATTACHMENT III

2 SAMPLE AGREEMENT FOR CONSULTANT SERVICES

3 THIS AGREEMENT is made and entered into this _____ day
4 of _____, 2001, between the County of Fresno, a political
5 subdivision of the State of California, (hereinafter called
6 "COUNTY"), and
7 **[Consultant's firm name]** _____, Engineer,
8 (A [State] Corporation / Partnership),
9 **[Individual's name]** _____ a sole proprietor doing
10 business as **[Firm name]**,
11 **[address]** _____, (hereinafter called
12 "CONSULTANT").

13 W I T N E S S E T H:

14 WHEREAS, COUNTY has a Joint Powers Agreement with the City of
15 Coalinga to manage the Coalinga Landfill, located at 30825 Lost
16 Hills Road, Coalinga, CA 93630-9184, hereinafter called the
17 LANDFILL; and

18 WHEREAS, COUNTY desires to retain a consultant civil engineer
19 to provide geologic and hydrogeologic services, prepare a Solid
20 Waste Facilities Permit Application, plans, specifications,
21 engineer's cost estimate and other documents for the construction
22 of a storm water collection basin, hereinafter called the Project;
23 and

24 WHEREAS, said consultant _____ engineer has been
25 selected in accordance with COUNTY's Ordinance Code Chapter 4.10 on
26 the selection of architects, engineers, and other professionals to
27 provide the engineering services necessary for the Project.

28 WHEREAS, said CONSULTANT represents that it is qualified and

1 willing to perform engineering services required by the COUNTY for
2 this project.

3 NOW, THEREFORE, the parties hereto have and by these presents
4 do agree as follows:

5 I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS

6 A. The COUNTY hereby contracts with the CONSULTANT as an
7 independent contractor to provide consultant services as required
8 for the project. Said services are described in Article II and
9 enumerated in Article III herein.

10 B. The CONSULTANT shall retain specialized subconsultants as
11 CONSULTANT requires to assist in completing the work. All
12 subconsultants used by CONSULTANT shall be approved by the COUNTY
13 before they are retained by the CONSULTANT, which approval shall
14 not be unreasonably withheld. Subconsultants listed in Exhibit
15 ____, attached hereto and incorporated herein, shall be considered
16 as approved by the COUNTY. Should CONSULTANT retain any
17 subconsultants, compensation to be paid to CONSULTANT under Article
18 V below, shall not be increased.

19 C. The CONSULTANT's services shall be performed as
20 expeditiously as is consistent with professional skill and the
21 orderly progress of the work, based on project schedules prepared
22 by the COUNTY.

23 D. The CONSULTANT and affiliated subconsultants shall not
24 submit bids, or subbids, for the contract construction phase of the
25 project for which CONSULTANT provides services hereunder. The
26 CONSULTANT and its subconsultants, and all other service providers,
27 shall not provide any project-related services for, or receive any
28 project-related compensation from any construction contractor,

1 subcontractor or service provider awarded a construction contract
2 for all or any portion of the project for which CONSULTANT provides
3 services hereunder. The CONSULTANT and its subconsultants, and all
4 other service providers, may provide services for, and receive
5 compensation from a construction contractor, subcontractor or
6 service provider who has been awarded a construction contract for
7 all or any portion of the project, provided that any such services
8 which are rendered, and any compensation which is received therefor
9 relates to work outside the scope of this Agreement.

10 E. The contact person(s) for the CONSULTANT shall be:

11 _____ telephone _____, fax _____, email, _____, web _____.

12 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

13 The work covered by this Agreement is for geologic and
14 hydrogeologic services necessary to bring the Coalinga Landfill
15 into compliance with waste discharge requirements. This will
16 include gathering all information for a Solid Waste Facilities
17 Permit Application, designing, preparing plans, specifications,
18 cost estimates and construction schedules for construction of a
19 storm water collection basin at the site.

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1 III. CONSULTANT-S SERVICES:

2 [Consultant-s Services will generally follow those described in
3 the RFP].

4 IV. COUNTY'S OBLIGATIONS:

5 [County-s Obligations will generally follow those described in
6 the RFP].

7 V. COMPENSATION:

8 A. Total Fee:

9 1. Notwithstanding any other provisions in this
10 Agreement, the Total Fee (Basic Fee plus Extra Services Allocation)
11 for the services required under this Agreement shall be the total
12 sum of \$_____.

13 B. Basic Fee:

14 1. Notwithstanding any other provisions in this
15 Agreement, the Basic Fee for the services required under Article
16 III shall be the total sum of \$_____. Within the Total Fee
17 limitation described in Section V.A.1. above, the Basic Fee for
18 each Phase of the project shall be divided as follows for purposes
19 of payment scheduling:

	Percent	Dollars
21 Phase 1 - Geologic and Hydrogeologic Study	10	
22 Phase 2 - Preliminary Design	10	
23 Phase 3 - Regulatory Documentation	40	
24 Phase 4 - Final Design	20	
25 Phase 5 - Bidding and Award	5	
26 Phase 6 - Construction Observation	10	
27 Phase 7 -Post Construction	<u>5</u>	
28 Total	100	

1 2. All expenses incidental to CONSULTANT's performance of
2 services under Article III of this Agreement shall be borne by
3 CONSULTANT. Incidental expenses include, but may not be limited
4 to, transportation and travel, postage and courier services, photo
5 and duplicating services, telephone and facsimile charges, computer
6 storage media, drawing and plotting media, printing of "check
7 print" plans and plan sets and documents specifically required by
8 the provisions of Article III. of this Agreement.

9 C. Extra Services:

10 1. There will be an additional maximum allocation of
11 \$_____ to pay for authorized Extra Services. Payment of Extra
12 Services in excess of \$_____ is unauthorized and can only be made
13 pursuant to a prior written amendment to this Agreement.

14 2. The CONSULTANT shall not undertake any Extra Services
15 without the advance authorization of the COUNTY Representative.
16 The CONSULTANT and the COUNTY shall expressly confirm in writing
17 the authorization and maximum cost for any such services before the
18 CONSULTANT is compensated for any work thereon. CONSULTANT shall
19 not add markup percentages or costs to subconsultant's costs unless
20 expressly authorized in writing by the COUNTY.

21 3. Payment for Extra Services will be at the hourly and
22 cost rates set forth in Exhibit __, attached hereto and incorporated
23 herein. The rates listed therein are in effect for the duration of
24 the Agreement. Such rates for Extra Services may be renegotiated
25 annually at CONSULTANT's request, if this Agreement is in effect
26 longer than one (1) year.

27 4. The following are consultant services which are
28 considered as not included in Article III herein, but may be

1 required as Extra Services.

2 a. Providing construction observation services when
3 construction exceeds sixty (60) days beyond the original
4 construction contract schedule as adjusted for weather delays and
5 as adjusted for delays by CONSULTANT-caused change orders,
6 negligent errors, or omissions.

7 b. Conveying or transmitting construction documents
8 for agency approval when the CONSULTANT is granted prior
9 authorization by the COUNTY.

10 c. Making changes to documents which are ordered by
11 the COUNTY subsequent to COUNTY approval thereof.

12 d. Preparing change orders when the project scope is
13 changed on the basis of COUNTY-initiated requests, and such changes
14 are not a result of negligent errors, acts, or omissions by the
15 CONSULTANT.

16 e. If necessary, advising and assisting the COUNTY
17 with respect to any settlement or litigation arising out of any
18 failure of the CONTRACTOR to fully perform the construction
19 contract in accordance with the contract documents.

20 f. Performing a visual inspection, within one year
21 following the date of substantial completion (if requested by the
22 COUNTY on the project), and reporting in writing on detectable
23 defects in workmanship or material.

24 g. Providing site surveys, geotechnical, and soil
25 investigations.

26 h. Providing unforeseen, extraordinary, or unique
27 services or items not covered nor normally included in the Basic
28 Fee, but authorized by the COUNTY Representative.

1 i. If requested by COUNTY, as provided for in Section
2 IV.____.(Const.), to retain, when required for the project an
3 independent testing laboratory to provide necessary soils,
4 chemical, structural, mechanical, electrical or other tests and
5 reports as may be necessary to assure quality control and
6 construction compliance with the plans and specifications.

7 j. Providing those items under Article III which are
8 identified as Extra Services.

9 5. If the CONSULTANT becomes aware of potential
10 unforeseen expenses that would not be covered by the Basic Fee of
11 this Agreement or for Extra Services as delineated in this Article
12 V., Section C., CONSULTANT shall inform the COUNTY of the extent
13 and nature of such expenses or services. Upon mutual agreement of
14 the CONSULTANT and the COUNTY, this Agreement may be amended in
15 writing to cover such unforeseen expense or cost of Extra Service.

16 6. In the event the COUNTY Representative expressly
17 authorizes Extra Services, CONSULTANT shall keep complete records
18 showing the hours and description of activities worked by each
19 person who works on the project and all costs and charges
20 applicable to the Extra Services work authorized. Should there be
21 a claim for Extra Services, the CONSULTANT understands and agrees
22 that he or she must specifically identify the activity, performer
23 of the activity, reason for the activity, and COUNTY official
24 requesting the activity, or the claim will be denied. CONSULTANT
25 shall be responsible for all subconsultants keeping similar
26 records. The CONSULTANT shall not stop the work, including the
27 design in other areas unrelated to the Extra Services request or
28 claim, unless it can be shown the project design cannot proceed

1 while a claim or request for Extra Services is being evaluated.

2 D. Payments:

3 1. Progress payments will be made by the COUNTY upon
4 receipt of the CONSULTANT's monthly invoices and approval by COUNTY
5 thereof, based on the COUNTY's evaluation of the completion of the
6 respective components of the projects(s). Invoices shall clearly
7 identify the specific project, agreed maximum project fee, and
8 phase and description of the work performed], and shall be
9 submitted with the documentation identified in paragraph V.D.5.
10 below. CONSULTANT shall submit separate invoices for Extra
11 Services, accompanied with copies of any subconsultant's invoices
12 and costs for approved incidentals. Invoices shall be forwarded
13 to:

14 Stuart G. Seiden, Capital Projects Division Mgr.
15 Fresno County Department of Public Works
16 2220 Tulare Street, Suite 608
17 Fresno, CA 93721-2106

18 2. Upon receipt of a proper invoice, the COUNTY
19 Department of Public Works will take a maximum of five (5) working
20 days to review, approve, and submit it to the COUNTY
21 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or
22 inaccurate invoices will be returned to the CONSULTANT for
23 correction and resubmittal. Payment, less retention, will be
24 issued to CONSULTANT within forty (40) calendar days of the date
25 the Auditor-Controller/Treasurer-Tax Collector receives the
26 approved invoice.

27 3. COUNTY is entitled to and shall withhold a ten percent
28 (10%) retention from the earned compensation in accordance with the

provisions of Article VII of this Agreement.

4. An unresolved dispute over a possible negligent error or omission may cause payment of CONSULTANT fees in the disputed amount to be withheld by the COUNTY.

5. Concurrently with the invoices, the CONSULTANT shall provide its certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies of issued checks, receipts, or other COUNTY pre-approved documentation, that complete payment, less a ten percent (10%) retention, has been made by CONSULTANT to all subconsultants as provided herein for all previous invoices paid by the COUNTY, and that CONSULTANT has complied with state wage and work hour laws and regulations. However, the parties do not intend that the foregoing creates in any subconsultant or subcontractor a third party beneficiary status or third party beneficiary rights, and expressly disclaim any such status or rights.

6. Final invoice, and separate invoice for retentions, shall be submitted to COUNTY no later than thirty (30) days after the project is completed. The CONSULTANT shall provide its certification acceptable to the COUNTY, on COUNTY request, that all subconsultants have received full payment for services rendered and work performed on the project. Payment for retentions shall not be made until all post-construction services are completed in accordance with the provisions of Article III, Section ____ (*Post Construction*) of this Agreement, including but not limited to record drawings approval, operation and maintenance manual review, and furnishing of required reports.

7. In the event the COUNTY reduces the scope of the

1 project, the CONSULTANT will be compensated on a pro rata basis for
2 actual work completed and accepted by the COUNTY in accordance with
3 the terms of this Agreement.

4 VI. COMPENSATION RECORDS

5 The CONSULTANT shall keep complete records showing the hours
6 and description of activities performed by each person who works on
7 the project and all associated costs or charges applicable to work
8 covered by the Basic Fee and approved Extra Services. The
9 CONSULTANT will be responsible for all sub-consultants keeping
10 similar records.

11 VII. RETENTION FROM EARNED COMPENSATION:

12 A. In addition to any amounts withheld under Article III.
13 Section ____.[const phase], COUNTY is entitled to and shall withhold
14 a ten percent (10%) retention from the earned compensation of the
15 CONSULTANT. Such retention from earned compensation may, at the
16 COUNTY'S option, be applied to all phases of the consultant
17 services to be provided under this agreement, including those
18 phases completed and Extra Services.

19 B. At the request and expense of the CONSULTANT, securities
20 equivalent to the amount withheld shall be deposited with the
21 COUNTY or with a state or federally chartered bank in California as
22 the escrow agent, in accordance with Section 22300 of the
23 California Public Contract Code, attached hereto as Exhibit __ and
24 incorporated herein, which provides for the substitution of
25 securities for any moneys withheld by a public agency to ensure
26 performance under a contract. If such request is made by the
27 CONSULTANT, the escrow agreement shall be prepared by CONSULTANT in
28 compliance with the above-referenced statute and it may be executed

1 by the Director of the Department of Public Works.

2 C. When the construction contract for the project has been
3 satisfactorily performed to the eighty percent (80%) point of
4 completion without major pending claims, disputes or other matters
5 in question between the parties, the COUNTY may, at its discretion,
6 reduce the retention from ten percent (10%) to five percent (5%),
7 and the resulting surplus funds, less any current-phase or Extra
8 Service retention, will be paid by COUNTY to CONSULTANT at that
9 time. The final retention of five percent (5%) will be paid in
10 accordance with the payment provisions of this Agreement and upon
11 receipt of proper invoice, within forty-five (45) days after
12 completion of all of CONSULTANT's obligations under this Agreement,
13 including the resolution of all claims and disputes between COUNTY
14 and CONSULTANT.

15 VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

16 A. The CONSULTANT shall at any time during regular business
17 hours, and as often as the COUNTY may deem necessary, make
18 available for examination by the COUNTY Auditor-Controller /
19 Treasurer-Tax Collector, or their authorized representatives, all
20 of CONSULTANT's records and data with respect to matters covered by
21 this Agreement. The CONSULTANT shall permit COUNTY authorities to
22 audit and inspect all invoices, materials, payrolls, records of
23 personnel, conditions of employment, and other data relating to
24 matters covered by this Agreement.

25 B. The CONSULTANT shall be subject to the examination and
26 audit of the Auditor General for a period of three (3) years after
27 final payment under this Agreement (Government Code Section 8546.7)

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1 IX. ERRORS OR OMISSION CLAIMS AND DISPUTES

2 A. Definitions:

3 1. A "Consultant" is a duly licensed Architect or
4 Engineer, or other provider of professional services, acting as a
5 business entity (owner, partnership, corporation, joint venture or
6 other business association) in accordance with the terms of an
7 Agreement with the COUNTY.

8 2. A "Claim" is a demand or assertion by one of the
9 parties seeking, as a matter of right, adjustment or interpretation
10 of contract terms, payment of money, extension of time, change
11 orders, or other relief with respect to the terms of the contract.
12 The term "Claim" also includes other disputes and matters in
13 question between the COUNTY and CONSULTANT arising out of or
14 relating to the contract. Claims must be made by written notice.
15 The provisions of Government Code section 901, et seq., shall apply
16 to every claim made to COUNTY. The responsibility to substantiate
17 claims shall rest with the party making the claim. The term
18 "Claim" also includes any allegation of an error or omission by the
19 CONSULTANT.

20 B. In the spirit of cooperation between the COUNTY and
21 CONSULTANT, the following procedures are established in the event
22 of any claim or dispute alleging a negligent error, act, or
23 omission, of the CONSULTANT.

24 1. Claims, disputes or other matters in question between
25 the parties, arising out of or relating to this Agreement, shall
26 not be subject to arbitration, but shall be subject to the
27 following procedures.

28 2. The project manager of COUNTY and CONSULTANT shall

1 meet and confer and attempt to reach agreement on any dispute,
2 including what damages have occurred, the measure of damages and
3 what proportion of damages, if any, shall be paid by either party.

4 The parties agree to consult and consider the use of mediation or
5 other form of dispute resolution prior to resorting to litigation.

6 3. If the COUNTY and CONSULTANT cannot reach agreement
7 under the immediately preceding paragraph IX.B.2., the disputed
8 issues may, upon concurrence by all parties, be submitted to a
9 panel of three (3) for a recommended resolution. The CONSULTANT
10 and the COUNTY shall each select one (1) member of the panel, and
11 the third member shall be selected by the other two panel members.

12 The discovery rights provided by California Code of Civil
13 Procedure for civil proceedings shall be available and enforceable
14 to resolve the disputed issues. Either party requesting this
15 dispute resolution process shall, when invoking the rights to this
16 panel, give to the other party a notice describing the claims,
17 disputes and other matters in question. Prior to 20 days before
18 the initial meeting of the panel, both parties shall submit all
19 documents such party intends to rely upon to resolve such dispute.

20 If it is determined by the panel that any party has relied on such
21 documentation, but has failed to previously submit such
22 documentation on a timely basis to the other party, the other party
23 shall be entitled to a 20-day continuance of such initial meeting
24 of the panel. The decision by the panel is not a condition
25 precedent to arbitration, mediation or litigation.

26 4. Upon receipt of the panel's recommended resolution of
27 the disputed issues, the COUNTY and the CONSULTANT shall again meet
28 and confer and attempt to reach agreement. If the parties still

1 are unable to reach agreement, each party shall have recourse to
2 all appropriate legal and equitable remedies.

3 C. The procedures to be followed in the resolution of claims
4 and disputes may be modified at any time by mutual agreement of the
5 parties hereto.

6 D. The CONSULTANT shall continue to perform its obligations
7 under this Agreement pending resolution of any dispute, and the
8 COUNTY shall continue to make payments of all undisputed amounts
9 due under this Agreement.

10 E. When a claim by either party has been made alleging the
11 CONSULTANT's negligent error, act, or omission, the COUNTY Project
12 Manager and the CONSULTANT shall meet and confer within twenty-one
13 (21) days after the written notice of the claim has been provided.

14 X. JOINDER OF PARTIES

15 The CONSULTANT, the CONSULTANT's consultants of any tier,
16 subcontractors of any tier, suppliers and construction lenders
17 shall all be bound by the dispute resolution provisions of this
18 Agreement, and immediately upon demand of COUNTY or CONSULTANT,
19 shall participate in and shall become parties to the dispute
20 resolution process, provided they have signed any document that
21 incorporates or refers to the dispute resolution provisions of this
22 Agreement. Failure of CONSULTANT, whether intended or inadvertent,
23 to ensure that such nonparties have signed such a document shall
24 inure only to CONSULTANT's detriment, if any there be. COUNTY
25 shall not suffer a detriment by CONSULTANT's action or inaction in
26 this regard. If such a party after due notice fails to appear at
27 and participate in the dispute resolution proceedings, the panel
28 established in accordance with the provisions of paragraph IX.B.3.

1 shall make a decision based on evidence introduced by the party or
2 parties who do participate.

3 XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS

4 A. The CONSULTANT will review and analyze construction
5 contract claims and recommend resolution of them as soon as
6 possible following receipt of demand by COUNTY.

7 B. Within a reasonable time after receipt of a claim, the
8 CONSULTANT shall provide a written analysis of the claim to the
9 COUNTY, signed by the CONSULTANT and any affected sub-consultants.

10 The written analysis shall include the CONSULTANT's professional
11 opinion of the responsibility for payment of the claim, with
12 supporting facts and documentation. A copy of the written analysis
13 shall be provided to the respective insurance adjusters for
14 CONSULTANT and any affected sub-consultant.

15 C. Upon receipt of a claim, the CONSULTANT may also take one
16 (1) or more of the following actions, within ten (10) days of
17 receipt of a claim:

18 1. Request additional supporting data from the claimant,
19 requiring that such data be supplied within ten (10) days of the
20 request;

21 2. Submit a schedule to the parties indicating when the
22 CONSULTANT expects to respond to the claim, which schedule shall
23 not exceed thirty (30) days from CONSULTANT's original receipt of
24 the claim;

25 3. Recommend rejection of the claim in whole or in part,
26 stating the reasons for such rejection;

27 4. Recommend approval of the claim by the other party, or

28 5. Suggest a compromise.

1 D. In every case, CONSULTANT shall provide its recommended
2 resolution of a claim within thirty (30) days from the original
3 receipt of claim, unless the CONSULTANT obtains COUNTY's prior
4 written approval.

5 XII. INDEPENDENT CONTRACTOR:

6 A. In performance of the work, duties, and obligations
7 assumed by CONSULTANT under this Agreement, it is mutually
8 understood and agreed that CONSULTANT, including any and all of
9 CONSULTANT's officers, agents and employees, will at all times be
10 acting and performing as an independent contractor, and shall act
11 in an independent capacity and not as an officer, agent, servant,
12 employee, joint venturer, partner or associate of the COUNTY.
13 Furthermore, COUNTY shall have no right to control or supervise or
14 direct the manner or method by which CONSULTANT shall perform its
15 work and function. However, COUNTY shall retain the right to
16 administer this Agreement so as to verify that CONSULTANT is
17 performing its obligations in accordance with the terms and
18 conditions thereof. CONSULTANT and COUNTY shall comply with all
19 applicable provisions of law and the rules and regulations, if any,
20 of governmental authorities having jurisdiction over matters the
21 subject thereof.

22 B. Because of its status as an independent contractor,
23 CONSULTANT shall have absolutely no right to employment rights and
24 benefits available to COUNTY employees. CONSULTANT shall be solely
25 liable and responsible for providing to, or on behalf of its
26 employees all legally-required employee benefits. In addition,
27 CONSULTANT shall be solely responsible and save COUNTY harmless
28 from all matters relating to payment of CONSULTANT's employees,

1 including compliance with Social Security, withholding, and all
2 other regulations governing such matters. It is acknowledged that
3 during the term of this Agreement CONSULTANT may be providing
4 services to others unrelated to the COUNTY or to this Agreement.

5 XIII. PARTIES BOUND BY AGREEMENT:

6 This Agreement shall be binding upon the COUNTY, the
7 CONSULTANT, and their successors in interest, legal
8 representatives, executors, administrators, and assigns with
9 respect to all covenants as set forth herein.

10 XIV. REQUIRED APPROVALS:

11 It is understood that the CONSULTANT shall not assign, sublet,
12 subcontract, or transfer any of CONSULTANT's rights, duties, or
13 obligations under this Agreement, without the prior express,
14 written consent of the COUNTY. Such consent and approval may be
15 given only by the COUNTY Board of Supervisors.

16 XV. COMPLIANCE WITH LAWS:

17 CONSULTANT shall comply with all applicable federal, state,
18 and local laws, ordinances, regulations, and Fresno County Charter
19 Provisions in effect at the time of CONSULTANT's performance of the
20 professional services to be provided hereunder.

21 XVI. GOVERNING LAW:

22 A. Any controversy or claim arising out of or relating to
23 this Agreement which cannot be amicably settled without court
24 action shall be litigated either in a state court for Fresno
25 County, California, or in the U.S. District Court for the Eastern
26 District of California, located in Fresno County.

27 B. The rights and obligations of the parties and all
28 interpretations and performance of this Agreement shall be governed

1 in all respects by the laws of the State of California.

2 XVII. AMENDMENTS:

3 Any changes to this Agreement requested either by the COUNTY
4 or CONSULTANT may only be effected if mutually agreed upon in
5 writing by duly authorized representatives of the parties hereto.
6 This Agreement shall not be modified or amended, nor shall any
7 rights of a party hereto be waived, except by such a writing.

8 XVIII. CONSULTANT'S LEGAL AUTHORITY:

9 [FOR CALIFORNIA CORPORATIONS:] Each individual executing
10 this Agreement on behalf of CONSULTANT hereby covenants, warrants,
11 and represents: (i) that he or she is duly authorized to execute
12 and deliver this Agreement on behalf of such corporation in
13 accordance with a duly adopted resolution of the corporation's
14 board of directors and in accordance with such corporation's
15 articles of incorporation or charter and bylaws; (ii) that this
16 Agreement is binding upon such corporation; and (iii) that
17 CONSULTANT is a duly organized and legally existing corporation in
18 good standing in the State of California.

19 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing this
20 Agreement on behalf of CONSULTANT hereby covenants, warrants, and
21 represents: (i) that he or she is duly authorized to execute and
22 deliver this Agreement on behalf of such partnership in accordance
23 with its Partnership Agreement; and (ii) that this Agreement is
24 binding upon such partnership; and (iii) that CONSULTANT is a duly
25 organized and legally existing partnership in the State of
26 California.

27 [FOR OUT OF STATE CORPORATIONS:] Each individual executing
28 this Agreement on behalf of CONSULTANT hereby covenants, warrants,

1 and represents: (i) that he or she is duly authorized to execute
2 and deliver this Agreement on behalf of such corporation in
3 accordance with a duly adopted resolution of the corporation's
4 board of directors and in accordance with such corporation's
5 articles of incorporation or charter and bylaws; (ii) that this
6 Agreement is binding upon such corporation; (iii) that CONSULTANT
7 is duly organized and legally existing corporation in good standing
8 in the State of _____, is registered with the California
9 Secretary of State to do business in the State of California as a
10 foreign corporation, and; (iv) that each individual executing or
11 attesting this Agreement on behalf of CONSULTANT hereby covenants,
12 warrants, and represents:

13 a. That this Agreement is binding upon such
14 corporation; and

15 b. That CONSULTANT shall deliver to COUNTY all
16 necessary certificates and assurances indicating CONSULTANT's right
17 to conduct business in the State of California including but not
18 limited to certificates filed with the California Secretary of
19 State to conduct business in California and the name and
20 California-based address of CONSULTANT's agent for receipt of
21 service of process.

22 [FOR SOLE PROPRIETOR:] Each individual executing this
23 Agreement on behalf of CONSULTANT, a sole proprietor, hereby
24 covenants, warrants, and represents: (i) that he or she is duly
25 authorized to execute and deliver this Agreement on behalf of such
26 sole proprietor; and (ii) that this Agreement is binding upon such
27 proprietor.

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1 XIX. HOLD HARMLESS:

2 A. CONSULTANT shall hold harmless and indemnify COUNTY, its
3 officers, agents, and employees, against the payment of any and all
4 costs and expenses (including reasonable attorney fees and court
5 costs), damages, claims, suits, losses, and liability for bodily
6 and personal injury to or death of any person or for loss of any
7 property resulting from or arising out of any negligent or wrongful
8 acts, errors or omissions of CONSULTANT, its officers, agents, and
9 employees, in performing or failing to perform any work, services,
10 or functions under this Agreement.

11 B. COUNTY and CONSULTANT hereby declare their mutual intent
12 to cooperate in the defense of any claim, suit, or other action
13 alleging liability, arising from the negligent performance or
14 failure to perform of any COUNTY contractor or subcontractor in
15 connection with the project. Such cooperation may include an
16 agreement to prepare and present a cooperative defense after
17 consultation with CONSULTANT's professional liability insurance
18 carrier.

19 XX. LIABILITY INSURANCE:

20 A. Prior to commencing the duties under the Agreement with
21 the COUNTY, the CONSULTANT shall furnish the COUNTY, at no
22 additional cost to the COUNTY, certificates for the following
23 insurance policies which shall be kept in force at all times during
24 the term of the Agreement (i.e., until the Agreement is terminated
25 or it expires), and for such additional time as may be specified
26 herein with respect to a particular type of policy.

27 1. Commercial General Liability Insurance or
28 Comprehensive General Liability Insurance, naming the COUNTY as an

1 additional insured, with limits of not less than \$1,000,000 per
2 occurrence.

3 2. Comprehensive Automobile Liability Insurance with
4 limits for bodily injury of not less than \$250,000 per person,
5 \$500,000 per accident and for property damages of not less than
6 \$50,000, or such coverage with a combined single limit of \$500,000.

7 3. Worker's Compensation insurance policy as required by
8 the California Labor Code.

9 4. Professional Liability Insurance:

10 a. In the minimum amount of at least \$1,000,000
11 coverage per claim, with an annual aggregate of at least
12 \$1,000,000, and with a deductible not to exceed \$50,000. A
13 deductible greater than \$50,000 will be accepted upon the COUNTY
14 receiving satisfactory, certified information of the CONSULTANT's
15 ability to support such a deductible. The financial ability to
16 support the difference between the \$50,000 and greater deductible
17 amount requested by CONSULTANT shall be guaranteed by any of the
18 following:

19 1. Cash deposit with a trustee bank.

20 2. Irrevocable letter of credit issued by a bank
21 for a period sufficient for the COUNTY to determine if there is a
22 claim to be made against the CONSULTANT, e.g. six months after
23 termination of Agreement.

24 3. Withholding payment under terms of the
25 Agreement for the same period as under Article VII. herein.

26 b. CONSULTANT and subconsultants shall make full
27 disclosure, in writing to the COUNTY, of all pending and open
28 claims and disputes during the course of this Agreement that affect

1 the specified aggregate limits of the Professional Liability
2 Insurance policy.

3 c. Professional Liability Insurance shall extend for
4 a minimum of two (2) years past the date of final payment to
5 CONSULTANT, including the resolution of all claims, disputes, and
6 matters in question regarding the project.

7 d. In the event that CONSULTANT voluntarily changes,
8 or involuntarily changes, due to circumstances beyond its control,
9 its Professional Liability Insurance policy carrier during the
10 period such coverage is required to be in force (as specified in
11 the immediately preceding subparagraph XX.A.4.c), such new policy
12 shall include prior acts coverage retroactive, at least, to the
13 date of execution of this Agreement. CONSULTANT may, at its option
14 and expense, purchase supplemental or "tail" coverage from the
15 former policy carrier, negotiate a retroactive reporting date with
16 the new policy carrier for claims incurred but not reported as of
17 the date of change in policy carrier, and shall in any event
18 maintain Professional Liability Insurance in a manner that provides
19 continuous coverage to the COUNTY throughout the term of this
20 Agreement, and for a period of two (2) years past the issuance of
21 final payment to the CONSULTANT.

22 e. The CONSULTANT shall, provide professional
23 liability insurance for itself and all sub-consultants for this
24 project, extending from the beginning of project Phase 1 to two (2)
25 years past the issuance of final payment hereunder to the
26 CONSULTANT. This time period specifically includes that time
27 required for the resolution of all claims and disputes.

28 B. All policies shall be with admitted insurers licensed to

1 do business in the State of California. CONSULTANT shall give
2 COUNTY at least thirty (30) days written advance notice of any
3 expiration, cancellation or reduction in the coverage of any of the
4 aforesaid policies.

5 C. The COUNTY, its officers, agents and employees,
6 individually and collectively, shall be named as an additional
7 insured under the policy for Commercial General Liability Insurance
8 or Comprehensive General Liability Insurance, but only insofar as
9 the operations under this Agreement are concerned. Such coverage
10 of COUNTY as additional insured shall apply as primary insurance
11 and any other insurance, or self-insurance, maintained by the
12 COUNTY, its officers, agents, and employees, shall be excess only
13 and not contributing with insurance provided under the CONSULTANT's
14 policies herein.

15 D. In the event CONSULTANT fails to keep in effect at all
16 times insurance coverage as herein provided, the COUNTY may, in
17 addition to other remedies it may have, suspend or terminate this
18 Agreement upon the occurrence of such event.

19 XXI. OWNERSHIP OF DOCUMENTS:

20 A. CONSULTANT understands and agrees that COUNTY shall retain
21 full ownership rights of the drawings and the work-product of
22 CONSULTANT for the project, to the fullest extent permitted by law.

23 In this regard, CONSULTANT acknowledges and agrees that
24 CONSULTANT's services are on behalf of COUNTY and are "works made
25 for hire," as that term is defined in copyright law, by COUNTY;
26 that the drawings and work-product to be prepared by CONSULTANT are
27 for the sole and exclusive use of COUNTY, and shall be the sole
28 property of COUNTY and its assigns, and the COUNTY and its assigns

1 shall be the sole owner of all patents, copyrights, trademarks,
2 trade secrets and other contractual and intangible rights of any
3 kind or nature in connection therewith; that all the contractual or
4 intangible rights of any kind or nature, title, and interest in and
5 to the drawings and work-product will be transferred to COUNTY by
6 CONSULTANT, and CONSULTANT will assist COUNTY to obtain and enforce
7 patents, copyrights, trademarks, trade secrets, and other
8 contractual and intangible rights of any kind or nature relating to
9 said drawings and work-product; that COUNTY shall be and become the
10 owner of such drawings and work product, free and clear of any
11 claim by CONSULTANT or anyone claiming any right through
12 CONSULTANT. CONSULTANT further acknowledges and agrees that
13 COUNTY's ownership rights in such drawings and work product shall
14 apply regardless of whether such drawings or work product, or any
15 copies thereof, are in the possession of CONSULTANT, or any other
16 person, firm, corporation, or entity. For the purpose of this
17 Agreement the terms "drawings and work-product" shall mean all
18 reports and study findings commissioned to develop the design of
19 the project, drawings and schematic or preliminary design documents
20 of the project, certified reproducibles of the original final
21 construction contract drawings of the project, specifications of
22 the project, the approved opinion of probable construction cost of
23 the project, record drawings of the project, as-built plans of the
24 project, and discoveries, developments, designs, improvements,
25 inventions, formulas, processes, techniques, or specific know-how
26 and data generated or conceived or reduced to practice or learning
27 by CONSULTANT, either alone or jointly with others, that result
28 from the tasks assigned to CONSULTANT by COUNTY under this

1 Agreement.

2 B. If the Agreement is terminated during or at the completion
3 of the preliminary design phase under Article III, a reproducible
4 copy of the preliminary design documents shall be submitted by
5 CONSULTANT to the COUNTY, which may use them to complete the
6 project in future phases.

7 C. If the project is terminated at the completion of the
8 construction document phase of the project, certified reproducibles
9 on .003" mylars of the original final construction contract
10 drawings, specifications, and approved opinion of probable
11 construction cost shall be submitted by CONSULTANT to COUNTY.

12 D. Documents, including drawings and specifications, prepared
13 by CONSULTANT for any project pursuant to this Agreement are not
14 intended or represented to be suitable for reuse by COUNTY or
15 others on extensions of the services provided for this project or
16 any other project. Any use of completed documents for other
17 projects and/or any use of uncompleted documents will be at
18 COUNTY's sole risk and without liability or legal exposure to
19 CONSULTANT.

20 E. COUNTY has requested that certain machine-readable
21 information and data ("CAD data") be provided by CONSULTANT for the
22 project under this Agreement. Such CAD data is more specifically
23 described in Article III. CONSULTANT shall not be liable for
24 claims, liabilities or losses arising out of, or connected with (1)
25 the modification or misuse by COUNTY, or anyone authorized by
26 COUNTY, of such CAD data; or (2) decline of accuracy or readability
27 of CAD data due to inappropriate storage conditions or duration; or
28 (3) any use by COUNTY, or anyone authorized by COUNTY, of such CAD

1 data for additions to this project or for the completion of this
2 project by others, or for other projects.

3 XXII. TIME OF COMPLETION:

4 A. The parties hereto agree to the Production Schedule shown
5 in Exhibit ____, attached hereto and incorporated herein.

6 B. CONSULTANT shall not be held responsible for delays caused
7 by COUNTY review, or by similar reasons beyond CONSULTANT's
8 control.

9 C. CONSULTANT shall complete all services required under this
10 Agreement in accordance with [Exhibit ____] and this Agreement shall
11 expire on _____ unless it is extended in writing by the
12 Director of the Department of Public Works or his/her designee, or
13 it is terminated earlier in accordance with the provisions of
14 Article XXIII.

15 E. Time is of the essence in the completion of the services
16 covered by this Agreement. Failure of the CONSULTANT to meet any
17 specific date in the above-referenced schedule, once such failure
18 exceeds fourteen 14 calendar days past the specified completion
19 date (unless the delay is attributable to the COUNTY or State), is
20 sufficient cause to immediately terminate this Agreement at the
21 option of the COUNTY in accordance with Article XXIII.C.

22 XXIII. TERMINATION OF AGREEMENT:

23 A. This Agreement may be terminated without cause at any time
24 by the COUNTY upon thirty (30) calendar days written notice. If
25 the COUNTY terminates this Agreement, the CONSULTANT shall be
26 compensated for services satisfactorily completed to the date of
27 termination based upon the compensation rates and subject to the
28 maximum amounts payable agreed to in Article V, together with such

1 additional services satisfactorily performed after termination
2 which are expressly authorized by the COUNTY Representative in
3 order to conclude the work performed to date of termination.

4 B. If the CONSULTANT terminates the Agreement for reasons
5 other than material breach by the COUNTY, the CONSULTANT shall
6 reimburse the COUNTY, up to a maximum of \$10,000 for the actual
7 expense of issuing a Request For Proposal (RFP), engaging a new
8 CONSULTANT, and the new CONSULTANT's cost in becoming familiar with
9 the previous CONSULTANT's design.

10 C. The COUNTY may immediately suspend or terminate this
11 Agreement in whole or in part, where in the determination of the
12 COUNTY there is:

- 13 1. An illegal or improper use of funds;
- 14 2. A failure to comply with any term of this Agreement;
- 15 3. A substantially incorrect or incomplete report
16 submitted to the COUNTY;
- 17 4. Improperly performed service.

18 D. In no event shall any payment by the COUNTY constitute a
19 waiver by the COUNTY of any breach of this Agreement or any default
20 which may then exist on the part of the CONSULTANT. Neither shall
21 such payment impair or prejudice any remedy available to the COUNTY
22 with respect to the breach or default. The COUNTY shall have the
23 right to demand of the CONSULTANT the repayment to the COUNTY of
24 any funds disbursed to the CONSULTANT under this Agreement, which,
25 in the judgment of the COUNTY and as determined in accordance with
26 the procedures of Article IX ("Errors or Omissions Claims and
27 Disputes"), were not expended in accordance with the terms of this
28 Agreement. The CONSULTANT shall promptly refund any such funds

1 upon demand.

2 E. The terms of this Agreement, and the services to be
3 provided thereunder, are contingent on the approval of funds by the
4 appropriating government agency. Should sufficient funds not be
5 allocated, the services provided may be modified, or this Agreement
6 terminated at any time by giving the CONSULTANT thirty (30) days
7 advance written notice.

8 XXIV. CONFLICT OF INTEREST:

9 The CONSULTANT shall comply with the provisions of the Fresno
10 County Department of Public Works Conflict of Interest Code,
11 attached hereto as Exhibit ____ and incorporated herein. Such
12 compliance shall include the filing of annual statements pursuant
13 to the regulations of the State Fair Political Practices
14 Commission.

15 XXV. ENTIRE AGREEMENT:

16 This Agreement constitutes the entire agreement between the
17 COUNTY and the CONSULTANT with respect to the subject matter hereof
18 and supersedes all previous negotiations, proposals, commitments,
19 writings, advertisements, publications, and understandings of any
20 nature whatsoever unless expressly included in this Agreement.

21 XXVI. SEVERABILITY:

22 Should any provision herein be found or deemed to be invalid,
23 this Agreement shall be construed as not containing such provision,
24 and all other provisions which are otherwise lawful shall remain in
25 full force and effect, and to this end the provisions of this
26 Agreement are hereby declared to be severable.

27 ///

28 ///

1 IN WITNESS WHEREOF, the parties hereto have caused this
2 Agreement to be executed as of the day and year first above
3 written.

4
5 **CONSULTANT NAME**

COUNTY OF FRESNO

6
7 BY: _____

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

8 TITLE: _____

9 *(Insert address, tel, fax)*

10
11 FEDERAL ID NO. _____

12
13 REVIEWED AND RECOMMENDED FOR
APPROVAL

APPROVED AS TO LEGAL FORM
PHILLIP S. CRONIN, COUNTY COUNSEL

14
15 BY: _____
RICHARD L. BROGAN, DIRECTOR
16 DEPARTMENT OF PUBLIC WORKS

BY: _____
APPROVED AS TO ACCOUNTING FORM

17 BY: _____
18 CAROLINA JIMENEZ-HOGG, DIRECTOR
PLANNING & RESOURCE MANAGEMENT
19 DEPARTMENT

BY: _____
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

20 Fund: 0700 / Subclass: 10000
/Org: 9028 / Acct:7295 /
21 Memo:03 / FY:01

22
23
24 BZ:bz
07/30/01
25 G:\Capital\Coalinga Landfill\Storm Water
Collection Basin\RFP\Sample
26 Agreement\sample_agm_CL

27

28